

REMARKS

Claims 1-3 and 5-40 are pending in the application. Claims 1-3 and 7-30 have been allowed and claims 5,6, and 31-40 stand rejected. Applicant requests further review and examination in view of the claimed amendments and following remarks.

Summary of Examiner Interview

On March 10, 2009 the undersigned conducted an interview. During the interview the 35 U.S.C. § 101 rejections were discussed. No agreement was reached.

Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 1-3 and 7-30 are allowable over the art of record.

Claim Rejections – 35 USC § 112

Claims 5-6 and 32-40 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. Applicant herein amends claims 5-6 and 32-40. Accordingly, Applicant submits that since the basis for the rejection has been removed, the rejections are moot.

Claim Rejections – 35 USC § 101

Claims 31-40 stand rejected under 35 U.S.C. § 101 as allegedly being directed towards non-statutory subject matter. Applicant disagrees.

The Office Action states that claim 31 is directed towards software *per se* and is not considered statutory. Applicant respectfully submits that claims 31-40 are statutory product claims. Claims 31-40 are directed towards a “computer-readable storage medium comprising computer-readable instructions.” Claims 31-40 are directed towards what are known as “Beauregard” claims. On May 12, 1995 the Commissioner of Patents was ordered by the Federal Circuit to examine such claims after admitting “that computer programs embodied in

a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C. §§ 102 and 103.” *In re Beauregard*, 53 F.3d 1583; 35 U.S.P.Q.2D (BNA) 1383 (Fed. Cir. 1995). Applicant also notes that MPEP § 2105.01, I and subsequent cases have found that this type of product claim is patentable. *See In re Lowry*, 32 F.3d 1579 (Fed. Cir. 1994). Accordingly, Applicant respectfully requests reconsideration of the rejections of claims 31-40.

CONCLUSION

Applicant requests the Examiner reconsider the rejections and issue a Notice of Allowance of all the claims.

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